

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FERRING PHARMACEUTICALS INC.,
REBIOTIX INC.

Plaintiffs,

v.

FINCH THERAPEUTICS GROUP, INC.,
FINCH THERAPEUTICS, INC., and FINCH
THERAPEUTICS HOLDINGS, LLC.

Defendants.

FINCH THERAPEUTICS GROUP, INC.,
FINCH THERAPEUTICS, INC., FINCH
THERAPEUTICS HOLDINGS, LLC and
REGENTS OF THE UNIVERSITY OF
MINNESOTA.

Counterclaim-Plaintiffs,

v.

FERRING PHARMACEUTICALS INC.,
REBIOTIX INC.

Counterclaim-Defendants.

CLAIM CONSTRUCTION ORDER

The Court has determined that, as used in the asserted claims of United States Patent Nos. 10,022,406 (the “‘406 patent”), 9,962,413 (the “‘413 patent”), 10,328,107 (the “‘107 patent”), 10,463,702 (the “‘702 patent”), 10,675,309 (the “‘309 patent”), 10,286,011 (the “‘011 patent”), 10,286,012 (the “‘012 patent”), 10,251,914 (the “‘914 patent”), 11,491,193 (the “‘193 patent”), and 11,541,080 (the “‘080 patent”) (collectively the “Patents-in-Suit”), the terms and phrases below have the following meanings:

CLAIM TERM	PATENT(S)	CONSTRUCTION
“rough particulate matter”	’406 patent ’107 patent ’702 patent ’309 patent	“rough, macroscopic, non-living matter”
“free of” / “free of rough particulate matter”	’406 patent ’702 patent ’309 patent	“a zero amount of” / “a zero amount of rough, macroscopic, non-living matter”
“the filtering separates bacteria from rough particulate matter” / “separated from rough particulate matter”	’107 patent ’702 patent ’309 patent	“the filtering separates bacteria from rough, macroscopic, non-living matter” / “separated from rough, macroscopic, non-living matter”
“substantially entire microbiota”	’406 patent ’413 patent ’702 patent	No construction necessary
“effective amount”	’011 patent ’012 patent ’914 patent	“a sufficient amount to provide the desired effect”
“at least six different classes of bacteria selected from the group consisting of Actinobacteria, Bacteroidia, Bacilli, Clostridia, Erysipelotrichi, Alphaproteobacteria, Betaproteobacteria, Gammaproteobacteria, Mollicutes, and Verrucomicrobiae”	’011 patent ’012 patent ’914 patent	A Markush group term for which no construction is necessary.
“extract”	’011 patent ’012 patent ’914 patent	“a substance obtained from a material, mixture, organism, or part of an organism by some chemical and/or physical process”

CLAIM TERM	PATENT(S)	CONSTRUCTION
“human fecal microbe preparation” / “fecal . . . preparation” / “human fecal preparation”	’011 patent ’012 patent ’914 patent	Plain and ordinary meaning

Further, the parties to the above-captioned matter have agreed that, as used in the Patents-in-Suit, the following terms have the following meanings (D.I. 91), which are hereby adopted by the Court:

CLAIM TERM	PATENT(S)	CONSTRUCTION
“no particle having a size of greater than 0.5 mm”	’011 patent ’012 patent ’914 patent	“no particle greater than 0.5 mm as shown by sieving”
“amount effective”	’702 patent ’309 patent ’080 patent	“a sufficient amount to provide the desired effect”

SO ORDERED this 28 day of February, 2023

/s/ Richard G. Andrews

United States District Judge